IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8968 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO. LTD. - Petitioner(s)

Versus

RAVJIBHAI KALIDAS PATEL & 2 - Respondent(s)

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Appearance :

MR PV NANAVATI for Petitioner No(s).: 1.
MR VIBHUTI NANAVATI for Petitioner No(s).: 1.
MR RJ GOSWAMI for Respondent No(s).: 1,2.
MR AMIT N PATEL for Respondent No(s).: 3.
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CORAM : HON'BLE MR.JUSTICE A.M.KAPADIA

Date : 11/08/2005

ORAL JUDGMENT

1.By filing instant petition under Article 226/227 of the Constitution of India, the petitioner – United India

Insurance Company Limited seeks to challenge the judgement and award dated 14.3.1997 recorded in MACP No. 96 of 1989 by the MACT (Aux.), Navsari as well s judgement and award dated 31.1.2003 recorded in MACP No. 89 of 2002 (old No. 60 of 1991) by the MACT (Main), Valsad as they are obtained by perpetrating fraud on both the Tribunals since both the claim petitions are filed by the two sets of heirs and legal representatives of the deceased Kantibhai Patel who died in vehicular accident. It is therefore prayed to quash and set aside both the awards and to remit back both the claim petitions to one Tribunal for deciding afresh by consolidating the same and passing common award.

2. The facts leading to filing this petition in nutshell are that 2 claim petitions were filed under Motor Vehicles Act to receive compensation in respect of death of one Kantibhai Patel who has died in a vehicular accident which has taken place on 4.10.1988, by two sets of heirs and legal representatives of deceased Kantibhai Patel.

3. MACP No. 96 of 1989 has been filed before the MACT (Aux.), Navsari by respondent no.3 - Jashodaben Kantibhai Patel, the widow of the deceased Kantibhai Patel whereas MACP No. 89 of 2002 (old No. 60 of 1991) filed by respondent nos. 1 and 2 herein who happened to be the parents of the deceased Kantibhai Patel before the MACT (Main), Valsad.

4. Both the claim petitions came to be adjudicated by the respective Tribunals by passing the award in favour of the respective claimants.

5. So far as the MACP No. 96 of 1989 filed by respondent

No.3, widow of deceased Kantibhai Patel is concerned, the Tribunal has awarded Rs.1,44,640/- with running interest @ 12% per annum from the date of application till its realisation whereas MACP No. 89 of 2002 (old no. 60 of 1991) filed by respondent Nos. 1 and 2 – parents of deceased Kantibhai Patel before the MACT (Main), Valsad is concerned, the Tribunal has awarded Rs.3 lacs together with interest @ 9% per annum from the date of the application till its realisation.

6. In compliance of the award passed in MACP No. 96 of 1989 filed by the respondent no.3-widow, the petitioner has deposited total amount of Rs.2,92,688/- in favour of respondent no.3-widow with the Tribunal and out of the said amount, the Tribunal has ordered to deposit Rs.1,76,000/- in the name of respondent no.3 – original claimant in nationalised Bank for a period of 10 years, and remaining amount has been paid in cash to the respondent no.3-widow.

7. In compliance of the award passed in MACP No. 89 of 2002 (old No. 60 of 1991), the Insurance Company has deposited Rs.6,55,839/- in favour of respondent nos. 1 and 2- parents of deceased Kantibhai Patel with the Tribunal and the said amount is lying with the Tribunal.

8. According to the petitioner, at the time of depositing the awarded amount with the Tribunal, passed in MACP No. 89 of 2002 (old No. 60 of 1991), it has come to the notice of the petitioner that there are 2 claim petitions preferred by the respect heirs and legal representatives of deceased Kantibhai Patel who has died in a vehicular accident and therefore fraud is perpetrated upon both the Tribunals. Therefore this

petition is filed for the relief to which the reference is made earlier.

9. This Court has considered the submissions advanced by Mr. Vibhuti Nanavaty, learned advocate of the petitioner, Mr. R.J.Goswami, learned advocate for respondent Nos. 1 and 2 – parents of deceased Kantibhai Patel, and Mr. Amit Patel, learned advocate for respondent No.3 – widow of deceased Kantibhai Patel, perused both the impugned judgements and awards as well as the averments made in this petition.

10. So far as the factual matrix is concerned, there is no dispute that the accident has taken place on 4.10.1988 at about 3:00 PM on National Highway no.8 within the territorial jurisdiction of erstwhile Valsad District. MACP No. 96 of 1989 has been filed by the respondent no.3 – widow of deceased Kantibhai Patel against the driver, owner and the insurance company to receive the compensation, without impleading the present respondent nos. 1 and 2 – parents of deceased Kantibhai Patel, before the MACT (Aux.), Navsari whereas MACP No. 89 of 2002 (old no. 60 of 1991) has been filed by the parents of the deceased Kantibhai Patel against the driver, owner and the insurance company before the MACT (Main), Valsad. Both the claim petitions were filed in the MACT, Valsad of erstwhile District, Valsad. Thereafter, on bifurcation of District Valsad, MACP No. 89 of 2002 (old no. 60 of 1991) came to be transferred at Valsad where it was renumbred as MACP 89 of 2002. The facts remain that 2 claim petitions were preferred; one by widow of deceased Kantibhai Patel and the another by the parents of the deceased Kantibhai Patel before the same Tribunal which was adjudicated by different Tribunals on bifurcation of Valsad District.

Since filing of earlier claim petition being MACP No. 96 of 1989 by the widow of deceased Kantibhai Patel was not disclosed in subsequent claim petition, that is MACP No. 89 of 2002 (old no. 60 of 1991), filed by the parents of the deceased Kantibhai Patel, the Tribunal had no occasion to consider said aspect and therefore both the claim petitions were adjudicated by 2 different Tribunals.

11. It is required to be noted that in the earlier claim petition filed by the widow, she has not impleaded parents of the deceased Kantibhai Patel as co-petitioners or co-respondents and stated on oath that the parents have died. Similarly, in subsequent claim petition filed by the parents of the deceased Kantibhai Patel, they have also not impleaded the widow as co-petitioner or co-respondent. If that would have done, then there would not have been 2 awards against the insurance company for the death of one and same person.

12. In aforesaid view of the matter, according to this Court fraud is perpetrated upon both the Tribunals by the respondents who have filed 2 separate claim petitions to receive compensation for one and same accident. Therefore both the awards deserve to be quashed and set aside by allowing this petition, by remitting back the claim petitions to one Tribunal, i.e. MACT (Main), Valsad for deciding the same afresh by consolidating and delivering the common judgement.

13. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The judgements and awards dated 14.3.1997 recorded in MACP No. 96 of 1989 by the MACT (Aux.), Navsari as well as judgement and award dated 31.1.2003 recorded in MACP No. 89 of 2002 (old

No. 60 of 1991) by the MACT (Main), Valsad are hereby quashed and set aside, the result of which is that both the MACP Nos. 96 of 1989 and MACP No. 89 of 2002 (old no. 60 of 1991) are hereby remitted back to the MACT (Main, Valsad. The Tribunal shall consolidate both the claim petitions and deliver common judgement after giving ample opportunity to lead the evidence to all the parties.

14. MACT, Navsari is hereby directed to withdraw amount of Rs.1,76,000/- with interest accrued thereon prematurely, which has been put in fixed deposit for a period of 10 years in the name of respondent no.3 – widow of deceased Kantibhai Patel and shall be refunded to the petitioner – insurance company whereas the remaining amount of Rs.1,16,688/- paid to respondent no.3 shall be adjusted in final award that may be passed in her favour. Similarly, MACT (Main), Valsad shall refund the amount of Rs.6,55,839/- along with the interest accrued thereon, lying with it, to the petitioner insurance company.

15. Since the both the matters are old, the MACT (Main), Valsad shall give priority to the hearing of the matters and dispose them of on or before 31st December, 2005.

(A.M.Kapadia,J)

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